

**CHAPTER NO. 641**

**SENATE BILL NO. 3400**

**By Crutchfield, Dixon, Harper, Kyle**

**Substituted for: House Bill No. 3508**

**By McMillan, Brown**

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, Part 23, relative to transportation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-3-2305, is amended by adding the following language:

(c) It being in the public interest and for a public purpose to support the participation of small businesses in department contracts, the department is authorized to establish the programs described herein to assist small businesses to participate in department contracts, either as a prime or as a subcontractor. Small business shall be defined to include certified disadvantaged business enterprises as defined by 49 Code of Federal Regulations Part 26 and business enterprises that satisfy all the requirements of a disadvantaged business enterprise under Part 26, including but not limited to requirements of business size and net worth of owners, other than the requirement that the owners of the business qualify as a member of the groups identified in subsection 2 of the definition of socially and economically disadvantaged individuals in 49 Code of Federal Regulations Part 26.5. The commissioner may promulgate rules to implement the purpose of this section.

(1) The department is authorized to conduct studies to determine whether any group consisting of socially and economically disadvantaged individuals as defined in 49 Code of Federal Regulations Part 26 is underutilized on state funded construction projects. In the event underutilization is documented and any other necessary findings are made, the commissioner may elect to set appropriate goals on state funded projects.

(2) The department is authorized to offer construction management development programs for small businesses and may charge a fee for the programs.

(3) The department is authorized to create and implement a surety bond guarantee program for small businesses to act as subcontractors on department construction projects. The state may guarantee up to ninety percent (90%) of a surety bond amount of two hundred fifty thousand dollars (\$250,000) or less and up to eighty percent (80%) of a surety bond amount greater than two hundred fifty thousand dollars (\$250,000) which surety bond is provided by an approved surety. The department may be entitled to receive a fee from a participating small business and may require any participating small business to set aside part of the subcontract amount as security for the surety bond and/or guarantee. The department is required to promulgate rules to effectuate this subsection. In no event shall the total amount


guaranteed under this program at any given time exceed five million dollars (\$5,000,000). The department is authorized to expend funds from the highway fund to fund administrative expenses and fund any losses that may arise under the surety bond guarantee program.

(4) Annually, the commissioner shall report in writing the progress of this program to the Speaker of the Senate, the Speaker of the House of Representatives, the Governor, members of the House Transportation Committee, and members of the Senate Transportation Committee. The report shall include, as a minimum, the number of users of the surety bond guarantee plan; the number of defaults and dollar loss; the cost of the program categorized by cost of administration; and the cost of instruction (on-the-job and classroom).

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: April 26, 2004**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 10<sup>th</sup> day of May 2004**

  
PHIL BREDEZEN, GOVERNOR